

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Case No. 5:08-cr-93

AARON PENDERGRASS,)

Defendant.)

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 233 & 250)

This matter came before the court for a review of the Magistrate Judge's September 14, 2012 Report and Recommendation (R & R) in regards to Defendant's Motion to Vacate, Set Aside or Correct Sentence. Neither party has objected to the R & R, and the deadline for doing so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. FED. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See*

Campbell v. United States Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his sixteen page R & R, the Magistrate Judge carefully reviewed the factual record and the motion before the court. He determined that Mr. Pendergrass's Motion to Vacate, Set Aside or Correct Sentence should be DENIED.

The court agrees with the Magistrate Judge's conclusions. For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Order and Opinion, and DENIES Defendant's Motion to Vacate, Set Aside or Correct Sentence. (Doc. 233).

SO ORDERED.

Dated at Rutland in the District of Vermont, this 3rd day of October, 2012.



Christina Reiss, Chief Judge
United States District Court